

Notice of Allowability

Application No.

10/812,863

Examiner

Wendy C Haas

Applicant(s)

KANAYA ET AL.

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers filed March 29, 2004.
2. ☒ The allowed claim(s) is/are the claim.
3. ☒ The drawings filed on 29 March 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 3/29/4 and 8/16/4
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413)
Paper No./Mail Date 2/10/5
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in telephone interviews with Attorney Cindy Bonner on March 10 and 16, 2005.

The application has been amended as follows:

A. Page 1, line 1, the title has been amended to read: -- CALIBRACHOA PLANT NAMED 'SUNBELPISUPU' --.

B. Page 1, lines 3-5 have been deleted and are replaced by the following recitation:

--
BOTANICAL DESIGNATION

Calibrachoa sp.

VARIETY DENOMINATION

'Sunbelpisupu' --.

C. Page 1, line 10, both instances of the word "Petunia" have been changed to -- Calibrachoa

--.

D. Page 1, line 14, the word "Petunia" has been changed to -- Calibrachoa --.

E. Page 1, lines 16-26 have been deleted and are replaced by the following recitation: -- are only a few small flowered Calibrachoa varieties known to the inventor, such as 'SUNTORY SP-R' (United States Plant Patent 9,557), 'Sunberubu' (United States Plant Patent 9,754), 'Sunbelchipi' (United States Plant Patent 10,355) and 'Sunbelki' (United States Plant

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Patent 11,558), that are spreading, and have a medium plant height, with abundant branches and a high resistance to heat, rain and disease. There are even fewer varieties known to the inventors that have a great profusion of flowers, are yellowish-white with a reddish purple vein color, and have high resistance to rain, heat, and disease. Accordingly, this--.

F. Page 1, line 27, the word "Petunia" has been changed to -- Calibrachoa --.

G. Page 1, line 32 has been deleted.

H. Page 2, line 2, after the word "color.", the recitation -- The flower color of the female parent differs from that of the claimed plant.--.

I. Page 2, line 8, the recitation -- The flower color of the male parent differs from that of the claimed plant. -- has been added after the word "color.".

J. Page 2, line 22, the word "Petunia" has been changed to -- Calibrachoa --.

K. Page 2, lines 29-31 have been deleted and are replaced by the recitation: -- in accordance with the R. H. S. Colour Chart.--

L. Page 2, line 35, the word "Petunia" has been changed to -- Calibrachoa --.

M. Page 2, line 36, the words -- , known to the inventors, -- have been added after the word "available".

N. Page 4, line 13 has been deleted and is replaced by the recitation: -- This new variety of Calibrachoa plant, 'Sunbelpisupu', was --.

O. Page 4, line 24 has been deleted and is replaced by the recitation -- while growing in typical outdoor conditions in 24 cm pots, at an age of --.

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P. Page 4, line 25, the recitation – The average day temperature was approximately 23°C and the average night temperature was approximately 15°C.—has been added after the word “Japan.”.

Q. Page 4, line 27, “FIG.” has been changed to – Fig. --.

R. Page 4, line 28, the word “Petunia” has been changed to –Calibrachoa--.

S. Page 4, line 30, “FIG.” has been changed to – Fig. --.

T. Page 4, line 31, the word “Petunia” has been changed to – Calibrachoa--.

U. Page 4, line 36, the word “Petunia” has been changed to – Calibrachoa--.

V. Page 4, line 37, the recitation – as grown in typical outdoor conditions – has been added after the word “observed”.

W. Page 5, line 13, “Thickness” has been changed to – Diameter --.

X. Page 5, lines 15 and 16 have been deleted and are replaced with the recitation – Branching. – Approximately 50 branches per plant.--.

Y. Page 5, lines 18 and 19 have been deleted and are replaced by the recitation:

-- Color of stem:

Young – R.H.S. 144B

Mature – R.H.S. 200C --.

Z. Page 5, line 28, the word “Normal” has been changed to – Present and typical of the species--.

AA. Page 5, line 36, the recitation – Upper Surface, near-- has been added before “R.H.S.”.

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BB. Page 6, line 1, the recitation -- Lower Surface, near R.H.S. 78A.—has been added after “midvein.”.

CC. Page 6, line 13, the word “*Petunia*” has been changed to –Calibrachoa--.

DD. Page 6, line 14, the word “*hybrida*” has been deleted.

EE. Page 6, line 18, the recitation: -- The color is near R.H.S. 144B. – has been added after the word “smooth”.

FF. Page 6, line 19, the recitation:

– Diameter – Approximately 15 mm.

Depth – Approximately 13 mm.

Color (both surfaces) – near R.H.S. 144A.

Texture (both surfaces) – smooth.—has been added after “base.”.

GG. Page 6, line 22, the words “*Petunia hybrida*” have been changed to – Calibrachoa --.

HH. Page 6, line 26, after the word “strong.”, the recitation – Low temperature tolerance is at least 5°C; high temperature tolerance is approximately 35°C.--.

II. Page 6, line 28, “*Petunia*” has been changed to – Calibrachoa --.

JJ. Page 7, line 2 (in the claim), “*Petunia*” has been changed to – Calibrachoa --.

KK. Page 8, line 1 (in the title), “PETUNIA” has been changed to – CALIBRACHOA--.

LL. Page 8, line 9 (in the abstract), “*Petunia*” has been changed to – Calibrachoa --.

MM. Page 8, line 10 (in the abstract), “*Petunia*” has been changed to – Calibrachoa--.

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Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wendy C. Haas whose telephone number is (571) 272-0976. The examiner can normally be reached on Monday through Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on (571) 272-0811. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

W. C. Haas

**KENT BELL
PRIMARY EXAMINER**

